

Appl. No. 10/733,347

Amendments to the Drawings

One new page of drawings containing figures 7, 7A, and 7B is included with submission of this response.

As such structure was originally discussed and claimed, it is respectfully submitted that the new drawing figures are not new matter.

Remarks/Arguments

In the specification, the amendment to the paragraph at page 6, line 1, simply removes the term "and" in view of the addition of Figures 7, 7(a) and 7(b) to the application. Figures 7, 7(a) and 7(b) have been added to the application in response to the Examiner's objection to the drawings.

The paragraph beginning at page 10, line 18 has been amended in response to the Examiner's requirement that the drawings show every feature of the invention specified in the claims. In this regard, prior to this requirement, the specification did not include numerical references to "a board", now 60, "attachment means", 61, "straps", 61, "an adhesive", 64, and "mechanical fastener is Velcro", 63. These numerical references have been added to the specification in order to correspond to the added figures and as stated in new figures 7, 7A and 7B. As such structure was originally discussed and claimed, it is respectfully submitted that the new drawing figures are not new matter.

Claims 1-2, 4, 6, and 8-18 remain in the application. Claims 19, 20 and 22 have been cancelled. Claims 3, 5, 7 and 21 have been withdrawn as a result of an earlier restriction requirement. Claim 4 has been amended as a result of the addition of new claim 23. It is noted that the Examiner has acknowledged

Appl. No. 10/733,347

that Claim 4 is directed to allowable subject-matter. Claim 23 has been added as an intermediary claim as compared to claims 1 and 4. No new matter has been added.

The Examiner has rejected claims 1, 2, 13 and 19-20 under 35 U.S.C. § 102(b) as anticipated by Perkins (US Patent 4,572,578). In addition the Examiner has rejected claims 1, 2 and 13-20 under 35 U.S.C. § 102(e) as anticipated by Porterfield (US Published Application 2003/0159698). However, Perkins and Porterhouse do not teach every claimed element, and thus, withdrawal of these rejections is respectfully requested.

Perkins teaches a back rest having a semi-rigid frame having the shape of a shallow S formed by an upper concave portion and a lower convex portion, a cervical spinal support, a thoracic spinal support, a lumbo-sacral support and a kidney support. [Column 2, line 30] Accordingly, the device taught by Perkins accommodates the entire spine and is intended to provide comfort and maintain proper posture in the cervical, thoracic and lumbo-sacral areas [Column 1, lines 17-19]. Perkins does not teach a device that is directed to the correction of the positioning of the upper thoracic region. Perkins also does not teach a device that supports only the upper thoracic spine.

Porterfield (US Published Application 2003/0159698) which teaches a therapeutic support pad, the function of which is

intended to support a user's entire spine by promoting an even distribution of the user's weight for support [paras. 0002, 0009, 0037]. In this regard, the structure of the invention taught by Perkins is also approximately the length of the spinal region of a user from the base of the neck to the pelvis [para. 0036]. As with Perkins, Porterfield does not teach a device that is directed to the correction of the positioning the upper thoracic spine.

The device taught by Kalina supports only a user's upper thoracic spinal region and no other part of the spine [Page 2, lines 6-19; Page 5, lines 1-8; Page 6, lines 15-20]. The device is specifically designed to correct the positioning of the upper thoracic spine by having a user place the device between a substantially hard surface and the upper thoracic region of the user's spine. The weight of the user's body on the device and the substantially hard surface results in the device pushing the upper thoracic spine of the user upward relative to both the remainder of the user's spine as well as the muscles connected to the upper thoracic spine. In this regard, the device produces a mild hyper-extension of the upper thoracic spine which in turn allows for certain muscles in the upper thoracic spine region to relax by actively bringing the muscle origins and insertions on bony prominences of the spine together [Page 9 line 22 - Page 10,

Appl. No. 10/733,347

line 6]. If regions of the spine other than the upper thoracic region are supported (as is the case in the cited devices) the hyper-extension is less effective.

Accordingly, the device taught by Kalina is not anticipated by the teachings of either Perkins or Porterfield. In view of the foregoing, reconsideration of the rejections for anticipation is respectfully requested and favorable consideration and allowance of the claims solicited. Should the Examiner have any questions regarding this response, the amendments submitted herewith, or the allowability of the claims, it would be appreciated if the Examiner would contact the undersigned attorney of record at the telephone number provided below for purposes of facilitating prosecution of this application and for scheduling an interview, if necessary.

Respectfully submitted,

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By 

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